

CLERK'S OFFICE

STATE OF ILLINOIS
Pollution Control Board

The CITY OF CHICAGO,
an Illinois municipal corporation,

V.

PCB

04-29

(Enforcement—Land, Citizens)

a Delaware corporation,

an Illinois corporation, and

an Illinois corporation,

RAYMOND E. CROSS, an individual,

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Motion to Consolidate of the City of Chicago, a copy of which is herewith served upon you.

THE CITY OF CHICAGO

(312) 742-0330

Corporation Counsel

By:

Assistant Corporation Counsel

SERVICE LIST

Jeffrey M. Smith
19782 MacArthur Blvd., Suite 260
Irvine, CA 92612
*Authorized agent of Purex Industries, Inc.
served via Federal Express courier service*

United States Corporation Company
2711 Centerville Rd., Suite 400
Wilmington, DE 19808
*Registered agent of Purex Industries, Inc.
served via Federal Express courier service*

Robert L. Graham
Bill S. Forcade
Steven M. Siros
Jason E. Yearout
Jenner & Block
One IBM Plaza
Chicago, IL 60611
*Counsel of record for Purex Industries, Inc.,
in PCB 03-55
Served via first class U.S. Mail*

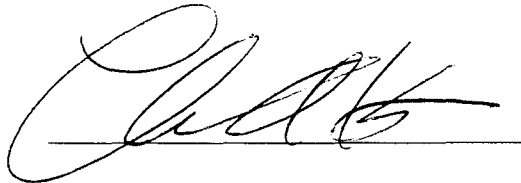
Cary R. Perlman
Shorge K. Sato
Latham & Watkins
5800 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
*Attorneys and agents for all other
respondents
served via messenger*

Francis A. Citera
Daniel T. Fahner
Greenberg Traurig, P.C.
77 W. Wacker Dr., Suite 2500
Chicago, IL 60601

Craig V. Richardson
Christopher J. Neumann
Greenberg Traurig, L.L.P.
1200 Seventeenth St., 24th Floor
Denver, CO 80202
*Counsel of record for 2222 Elston LLC
in PCB 03-55
served via first class U.S. Mail*

CERTIFICATE OF SERVICE

I, Charles A. King, an attorney, certify that I have served the attached **Motion to Consolidate** upon the persons listed above in the method indicated on September 5, 2003.

A handwritten signature in black ink, appearing to read 'C.A. King', is written over a horizontal line.

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

SEP 05 2003

STATE OF ILLINOIS
Pollution Control Board

The CITY OF CHICAGO,)
an Illinois municipal corporation,)
Complainant,)
v.)
PUREX INDUSTRIES, INC.,)
a Delaware corporation,)
FEDERAL CHICAGO CORP.,)
an Illinois corporation, and)
FEDERAL DIE CASTING CO.,)
an Illinois corporation,)
RAYMOND E. CROSS, an individual,)
Respondents.)

PCB 04-29

(Enforcement-Land, Citizens)

MOTION TO CONSOLIDATE

The City of Chicago ("City"), by its attorney, Mara S. Georges, Corporation Counsel, moves pursuant to Section 101.406 of the Board's procedural rules (35 Ill. Adm. Code 101.406) that the Board consolidate the above-captioned proceeding with pending proceeding 2222 Elston LLC v. Purex Industries, Inc., PCB 03-55, for the purposes of hearing and decision.

The complainant in PCB 03-55 seeks recovery of costs incurred conducting remedial activities at a site in Chicago, Cook County, Illinois, to address contamination resulting from the respondents' alleged violations of the Environmental Protection Act, 415 ILCS 5. The City has also incurred costs to remediate contamination at and around the same site. The City previously sought to intervene in PCB 03-55 as an additional plaintiff. In its order denying the City's motion, the Board noted,

Today's ruling does not preclude the City from filing its own complaint to seek reimbursement for costs incurred involving the site. If the City files its own complaint, consolidating the two actions may be appropriate. 2222 Elston LLC v. Purex Industries.

Inc., PCB 03-55 (January 23, 2003), slip op. at 2.

The City filed the complaint contemplated in the foregoing quote to commence the above-captioned proceeding. For the following reasons, the City submits that consolidation of these two proceedings is indeed appropriate:

1. Section 101.406 of the Board's procedural rules provides:

The Board, upon the motion of any party or upon its own motion, may consolidate two or more proceedings for the purpose of hearing or decision or both. The Board will consolidate the proceedings if consolidation is in the interest of convenient, expeditious, and complete determination of claims, and if consolidation would not cause material prejudice to any party. The Board will not consolidate proceedings where the burdens of proof vary. 35 Ill. Adm. Code 101.406.

2. The above-captioned proceeding and PCB 03-55 involve the same site, the same conditions, and many of the same events and transactions.

3. The City anticipates that the hearings in these two proceedings will involve much of the same evidence, including at least some of the same witnesses.

4. At present, litigation in PCB 03-55 is still at a relatively early stage. The respondents only very recently filed their answers to the complaint, and pleading is not even complete yet, inasmuch as under the hearing officer's order of August 26, 2003, the complainant has until September 22, 2003, to respond to affirmative defenses. Under the schedule proposed by the parties and accepted by the hearing officer in his order of August 26, 2003, the parties may seek leave to add additional parties until December 15, 2003, and fact discovery will continue until June 18, 2004. So, consolidating cases at this point should not result in any delay in proceedings in PCB 03-55, or prejudice any party to that proceeding.

5. In the interest of complete determination of claims, the City submits that it is preferable for the Board to have all parties and all claims involving the respondents' activities at the site before it when fashioning a remedy for violations.

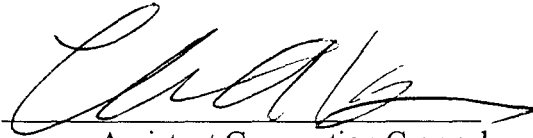
6. Burdens of proof do not vary between the above-captioned proceeding and PCB 03-55.

WHEREFORE, the City requests that the Board adopt an order pursuant to 35 Ill. Adm. Code 101.406 consolidating the above-captioned proceeding with PCB 03-55 for all purposes.

Respectfully submitted,

THE CITY OF CHICAGO

Mara S. Georges
Corporation Counsel

By: 
Assistant Corporation Counsel

Diane M. Pezanoski
Deputy Corporation Counsel
George D. Theophilos
Senior Counsel
Charles A. King
Assistant Corporation Counsel
Chicago Department of Law
30 N. LaSalle St., Suite 900
Chicago, IL 60602
(312) 742-0330